

Department of State

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Certificate; or (3) that, if the items are to be imported into the country issuing the Import Certificate, they will subsequently be reexported to another destination. All parties, including the ultimate consignee in the country of ultimate destination, must be shown on the completed Import Certificate.

[58 FR 39299, July 22, 1993, as amended at 71 FR 20541, Apr. 21, 2006]

§ 123.15 Congressional certification pursuant to Section 36(c) of the Arms Export Control Act.

(a) The Arms Export Control Act requires that a certification be provided to the Congress prior to the granting of any license or other approval for transactions, in the amounts described below, involving exports of any defense articles and defense services and for exports of major defense equipment, as defined in § 120.8 of this subchapter. Approvals may not be granted when the Congress has enacted a joint resolution prohibiting the export. Certification is required for any transaction involving:

(1) A license for the export of major defense equipment sold under a contract in the amount of \$14,000,000 or more, or for defense articles and defense services sold under a contract in the amount of \$50,000,000 or more to any country that is not a member country of the North Atlantic Treaty Organization (NATO), or Australia, Japan, New Zealand, or South Korea that does not authorize a new sales territory; or

(2) A license for export to a country that is a member country of the North Atlantic Treaty Organization (NATO), or Australia, Japan, New Zealand, or South Korea of major defense equipment sold under a contract in the amount of \$25,000,000 or more, or for defense articles and defense services sold under a contract in the amount of \$100,000,000 or more and provided the transfer does not include any other countries; or

(3) A license for export of a firearm controlled under Category I of the United States Munitions List, of this subchapter, in an amount of \$1,000,000 or more.

(b) Unless an emergency exists which requires the proposed export in the national security interests of the United

States, approval may not be granted for any transaction until at least 15 calendar days have elapsed after receipt by the Congress of the certification required by 22 U.S.C. 2776(c)(1) involving the North Atlantic Treaty Organization, any member country of the Organization, or Australia, Japan, New Zealand, or South Korea or at least 30 calendar days have elapsed for any other country; in the case of a license for an export of a commercial communications satellite for launch from, and by nationals of, the Russian Federation, Ukraine, or Kazakhstan, until at least 15 calendar days after the Congress receives such certification.

(c) Persons who intend to export defense articles and defense services pursuant to any exemption in this subchapter under the circumstances described in this section must provide written notification to the Directorate of Defense Trade Controls and include a signed contract and a DSP-83 signed by the applicant, the foreign consignee and the end-user.

[70 FR 34654, June 15, 2005, as amended at 73 FR 38343, Aug. 3, 2009]

EFFECTIVE DATE NOTE: At 77 FR 16598, Mar. 21, 2012, § 123.15 was amended by revising paragraphs (a)(1), (a)(2), and (b), effective upon the entry into force of the Treaty Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation (Treaty Doc. 110-7). For the convenience of the user, the revised text is set forth as follows:

§ 123.15 Congressional certification pursuant to Section 36(c) of the Arms Export Control Act.

(a) * * *

(1) A license for the export of major defense equipment sold under a contract in the amount of \$14,000,000 or more, or for defense articles and defense services sold under a contract in the amount of \$50,000,000 or more, to any country that is not a member of the North Atlantic Treaty Organization (NATO), or Australia, Israel, Japan, New Zealand, or the Republic of Korea that does not authorize a new sales territory; or

(2) A license for export to a country that is a member country of NATO, or Australia, Israel, Japan, New Zealand, or the Republic of Korea, of major defense equipment sold under a contract in the amount of \$25,000,000 or more, or for defense articles and defense services sold under a contract in the amount

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of \$100,000,000 or more, and provided the transfer does not include any other countries; or

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(b) Unless an emergency exists which requires the final export in the national security interests of the United States, approval may not be granted for any transaction until at least 15 calendar days have elapsed after receipt by the Congress of the certification required by 22 U.S.C. 2776(c)(1) involving NATO, or Australia, Israel, Japan, New Zealand, or the Republic of Korea or at least 30 calendar days have elapsed for any other country; in the case of a license for an export of a commercial communications satellite for launch from, and by nationals of, the Russian Federation, Ukraine, or Kazakhstan, until at least 15 calendar days after the Congress receives such certification.

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§ 123.16 Exemptions of general applicability.

(a) The following exemptions apply to exports of unclassified defense articles for which no approval is needed from the Directorate of Defense Trade Controls. These exemptions do not apply to: Proscribed destinations under § 126.1 of this subchapter; exports for which Congressional notification is required (see § 123.15 of this subchapter); MTCR articles; Significant Military Equipment (SME); and may not be used by persons who are generally ineligible as described in § 120.1(c) of this subchapter. All shipments of defense articles, including those to and from Canada, require a Shipper's Export Declaration (SED) or notification letter. If the export of a defense article is exempt from licensing, the SED must cite the exemption. Refer to § 123.22 for Shipper's Export Declaration and letter notification requirements.

(b) The following exports are exempt from the licensing requirements of this subchapter.

(1) Port Directors of U.S. Customs and Border Protection shall permit the export without a license of defense hardware being exported in furtherance of a manufacturing license agreement, technical assistance agreement, distribution agreement or an arrangement for distribution of items identified in

Category XIII(b)(1), approved in accordance with part 124, provided that:

(i) The defense hardware to be exported supports the activity and is identified by item, quantity and value in the agreement or arrangement; and

(ii) Any provisos or limitations placed on the authorized agreement or arrangement are adhered to; and

(iii) The exporter certifies on the Shipper's Export Declaration that the export is exempt from the licensing requirements of this subchapter. This is done by writing, "22 CFR 123.16(b)(1) and the agreement or arrangement (identify/state number) applicable"; and

(iv) The total value of all shipments does not exceed the value authorized in the agreement or arrangement.

(v) In the case of a distribution agreement, export must be made directly to the approved foreign distributor.

(2) Port Directors of U.S. Customs and Border Protection shall permit the export of components or spare parts (for exemptions for firearms and ammunition see § 123.17) without a license when the total value does not exceed \$500 in a single transaction and:

(i) The components or spare parts are being exported to support a defense article previously authorized for export; and

(ii) The spare parts or components are not going to a distributor, but to a previously approved end-user of the defense articles; and

(iii) The spare parts or components are not to be used to enhance the capability of the defense article;

(iv) Exporters shall not split orders so as not to exceed the dollar value of this exemption;

(v) The exporter may not make more than 24 shipments per calendar year to the previously authorized end user;

(vi) The exporter must certify on the Shipper's Export Declaration that the export is exempt from the licensing requirements of this subchapter. This is done by writing 22 CFR 123.16(b)(2) applicable.

(3) Port Directors of U.S. Customs and Border Protection shall permit the export without a license, of packing cases specially designed to carry defense articles.